

State of Washington
REPORT OF EXAMINATION
FOR WATER RIGHT CHANGE

Changed Place of Use
Add and Changed Point of Withdrawal

PRIORITY DATE
June 4, 1959

WATER RIGHT NUMBER
4844-A

MAILING ADDRESS
Isaak Land Inc
PO Box 953
Coulee City, WA 99115-0953

SITE ADDRESS (IF DIFFERENT)

Total Quantity Authorized for Withdrawal

WITHDRAWAL OR DIVERSION RATE

UNITS
GPM

ANNUAL QUANTITY (AF/YR)

Denied

Purpose

PURPOSE	WITHDRAWAL OR DIVERSION RATE		UNITS	ANNUAL QUANTITY (AF/YR)		PERIOD OF USE (mm/dd)
	ADDITIVE	NON-ADDITIVE		ADDITIVE	NON-ADDITIVE	

ADDITIVE	IRRIGATED ACRES		PUBLIC WATER SYSTEM INFORMATION	
	NON-ADDITIVE		WATER SYSTEM ID	CONNECTIONS

Denied

Source Location

COUNTY	WATERBODY	TRIBUTARY TO	WATER RESOURCE INVENTORY AREA
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SOURCE FACILITY/DEVICE	PARCEL	WELL TAG	TWP	RNG	SEC	QQ Q	LATITUDE	LONGITUDE
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Datum: NAD83/WGS84

Denied

Place of Use

Denied

Development Schedule

BEGIN PROJECT

NA

COMPLETE PROJECT

NA

PUT WATER TO FULL USE

NA

Provisions

Findings of Facts

Upon reviewing the investigator's report, I find all facts, relevant and material to the subject application, have been thoroughly investigated. Furthermore, I concur with the investigator that water is not available from the source in question, impairment will occur and that there will be detriment to the public interest.

Therefore, I ORDER denial of the application for change to Ground Water Certificate No. 4884-A.

Your Right To Appeal

You have a right to appeal this Order to the Pollution Control Hearings Board (PCHB) within 30 days of the date of receipt of this Order. The appeal process is governed by Chapter 43.21B RCW and Chapter 371-08 WAC. "Date of receipt" is defined in RCW 43.21B.001(2).

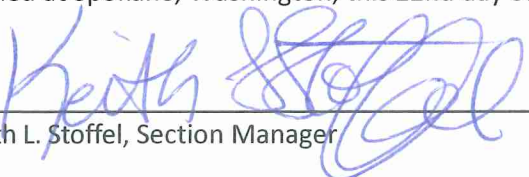
To appeal you must do the following within 30 days of the date of receipt of the Order.

File your appeal and a copy of this Order with the PCHB (see addresses below). Filing means actual receipt by the PCHB during regular business hours.

- Serve a copy of your appeal and this Order on Ecology in paper form - by mail or in person. (See addresses below.) E-mail is not accepted.
- You must also comply with other applicable requirements in Chapter 43.21B RCW and Chapter 371-08 WAC.

Street Addresses	Mailing Addresses
Department of Ecology Attn: Appeals Processing Desk 300 Desmond Drive SE Lacey, WA 98503	Department of Ecology Attn: Appeals Processing Desk PO Box 47608 Olympia, WA 98504-7608
Pollution Control Hearings Board 1111 Israel Road SW Ste 301 Tumwater, WA 98501	Pollution Control Hearings Board PO Box 40903 Olympia, WA 98504-0903

Signed at Spokane, Washington, this 22nd day of May, 2013.


Keith L. Stoffel, Section Manager

For additional information visit the Environmental Hearings Office Website: <http://www.eho.wa.gov>. To find laws and agency rules visit the Washington State Legislature Website: <http://www1.leg.wa.gov/CodeReviser>.

INVESTIGATOR'S REPORT

Dan Tolleson, Department of Ecology

Water Right Control Number CG3-*05283C

Ground Water Certificate No. 4844-A

BACKGROUND

This report serves as the written findings of fact concerning Water Right Application Number CG3-*05283C (Ground Water Certificate No. 4844-A). The application was amended and the priority date was changed to 12/20/2012. The applicant proposes to change the place of use, change the point of withdrawal and add additional points of withdrawal.

AUTHORIZED Water Right Attributes

Water Right Owner:	Jes Valentine
Priority Date:	06/04/1959
Place of Use	SW¼SW¼; Government Lots 3 and 4; SW¼NW¼; NW¼SW¼; NW¼SW¼, all in Section 4, T. 24 N., R. 29 E.W.M.

County	Waterbody	Tributary To	WRIA
Grant	Sump		42-Grand Coulee

Purpose	Rate	Unit	Ac-ft/yr	Begin Season	End Season
Irrigation	1000	GPM	400		

Source Name	Parcel	Well Tag	Twp	Rng	Sec	QQ Q	Latitude	Longitude
Sump	180636000	n/a	24N	29E	4	SW¼SW¼		

CFS = Cubic Feet per Second; Ac-ft/yr = Acre-feet per year; Sec. = Section; QQ Q = Quarter-quarter of a section; WRIA = Water Resource Inventory Area; E.W.M. = East of the Willamette Meridian; Datum in NAD83/WGS84.

REQUESTED Water Right Attributes

Applicant Name:	Isaak Land Inc
Date of Application:	12/20/2012
Place of Use	NW¼ of Section 21, T. 25 N., R. 30 E.W.M.

County	Waterbody	Tributary To	WRIA
Grant	Groundwater		42-Grand Coulee

Purpose	Rate	Unit	Acre-feet/yr	Begin Season	End Season
Irrigation	1000	GPM	400		

Source Name	Parcel	Well Tag	Twp	Rng	Sec	QQ Q	Latitude	Longitude
Proposed Well 1			25N	30E	16	S½S½		
Proposed Well 2			25N	30E	16	NW¼SE¼		
Proposed Well 3			25N	30E	16	S½S½		
Proposed Well 4			25N	30E	16	SW¼NE¼		

CFS = Cubic Feet per Second; Ac-ft/yr = Acre-feet per year; Sec. = Section; QQ Q = Quarter-quarter of a section; WRIA = Water Resource Inventory Area; E.W.M. = East of the Willamette Meridian; Datum in NAD83/WGS84.

Legal Requirements for Requested Change

The following is a list of requirements that must be met prior to authorizing the proposed change.

Public Notice

RCW 90.03.280 requires that notice of a water right application be published once a week, for two consecutive weeks, in a newspaper of general circulation in the county or counties where the water is to be stored, diverted and used. Notice of this application was published in the Coulee City New-Standard on June 20 and 27, 2007 and one protest was received. An amended Notice of this application was published in the Coulee City New-Standard on February 6 and 13, 2013 and no protests were received.

State Environmental Policy Act (SEPA)

A water right application is subject to a SEPA threshold determination (i.e., an evaluation whether there are likely to be significant adverse environmental impacts) if any one of the following conditions are met.

- It is a surface water right application for more than 1 cubic feet per second, unless that project is for agricultural irrigation, in which case the threshold is increased to 50 cubic feet per second, so long as that irrigation project will not receive public subsidies;
- It is a groundwater right application for more than 2,250 gallons per minute;
- It is an application that, in combination with other water right applications for the same project, collectively exceed the amounts above;
- It is a part of a larger proposal that is subject to SEPA for other reasons (e.g., the need to obtain other permits that are not exempt from SEPA);
- It is part of a series of exempt actions that, together, trigger the need to do a threshold determination, as defined under WAC 197-11-305.

Because this application, in combination with other water rights, would entail the withdrawal of more than 2,250 gallons per minute, it is subject to SEPA. A final Determination of Non-Significance was issued by Ecology on May 20, 2013, stating that no environmental impact statement is required.

Water Resources Statutes and Case Law

RCW 90.03.380(1) states that a water right that has been put to beneficial use may be changed. The point of diversion, place of use, and purpose of use may be changed if it would not result in harm or injury to other water rights.

The Washington Supreme Court has held that Ecology, when processing an application for change to a water right, is required to make a tentative determination of extent and validity of the claim or right. This is necessary to establish whether the claim or right is eligible for change. *R.D. Merrill v. PCHB* and *Okanogan Wilderness League v. Town of Twisp*.

RCW 90.44.100 allows Ecology to amend a ground water permit to (1) allow the user to construct a replacement or additional well at a new location outside of the location of the original well, or to (2) change the manner or place of use of the water, if:

- (a) The additional or replacement well taps the same body of public ground water as the original well. RCW 90.44.100(2)(a),
- (b) Where a replacement well is approved, the user must discontinue use of the original well and properly decommission the original well. RCW 90.44.100(2)(b),
- (c) Where an additional well is constructed, the user may continue to use the original well, but the combined total withdrawal from all wells shall not enlarge the right conveyed by the original permit or certificate. RCW 90.44.100(2)(c),
- (d) Other existing rights shall not be impaired. RCW 90.44.100(2)(d).

When changing or adding points of withdrawal to groundwater rights (RCW 90.44.100), or when consolidating exempt wells with an existing permit or certificate (RCW 90.44.105), the wells must draw from the *same body of public groundwater*. Indicators that wells tap the *same body of public groundwater* include:

- (a) Hydraulic connectivity.
- (b) Common recharge (catchment) area.
- (c) Common flow regime.
- (d) Geologic materials that allow for storage and flow, with recognizable boundaries or effective barriers to flow.

RCW 90.14.130 through 180 defines relinquishment of water rights. Generally, any person entitled to divert or withdraw waters under a water right who abandons the same, or who voluntarily fails, without sufficient cause, to beneficially use all or any part of said right to withdraw for any period of five successive years shall relinquish such right or portion thereof, and such right or portion thereof shall revert to the state.

INVESTIGATION

In considering the proposed application, the investigation included, but was not limited to, research and review of: (1) appropriate rules and statutes; (2) other water rights, permits and claims; (3) USGS topographic maps, air photographs and satellite imagery; (4) authorized and proposed points of withdrawal; (5) authorized and proposed place of use; (6) Hydrogeologic Analysis: Coulee City dated October 3, 2012; and (7) discussions with Department of Ecology regional program staff.

A field investigation was conducted on March 18, 2013 by Dan Tolleson. The authorized place of use and point of withdrawal is located approximately five miles east of Coulee City, Washington. The proposed place of use and points of withdrawal are located, approximately 11 miles to the northeast of Coulee City, Washington. Isaak Land Company owns the existing and proposed place of use, along with the authorized and proposed points of withdrawal.

The authorized place of use covers approximately 120 acres. Currently, this area is undeveloped and consists of native vegetation. Much of the northern portion of the place of use is very rocky and not irrigable. A small pond is located in the southern portion of the place of use and is the authorized point of withdrawal. This point of withdrawal is described as a sump for shallow ground water. The original permit file indicates that a low area was excavated and a dam was installed to hold water in a pond. This system is currently abandoned and the power was removed.

The proposed place of use is a 160 acre parcel of land that is currently undeveloped. This parcel of land is mostly rolling hills in native vegetation. The northern edge of the place of use is relatively steep and may not be practical for irrigation with modern farming practices. The proposed wells appear to be constructed and withdraw water for other irrigation rights in the area.

Proposed Use

The applicant proposes to move the entire water right approximately seven miles to the northeast of its originally authorized location. The authorized point of withdrawal is a sump (described as shallow ground water) which is proposed to be moved to four deep basalt wells, lying north of the proposed place of use. The authorized quantities are proposed to remain the same.

History of Water Use and Beneficial Use Analysis

Ground Water Certificate 4844-A authorized a total of 1000 gallons per minute, 400 acre-feet per year for the irrigation of 100 acres of land. On June 8, 1964, a Proof of Appropriation was submitted that stated that only 200 gallons per minute and 20 acres had been developed. On June 19, 1964, a certificate of water right was issued for full quantities, with no statement as to this discrepancy.

Aerial photographs were used to help verify the extent of development, historical and beneficial use of this water right. Aerial photographs from 1973 and 1977 indicate that approximately 30 acres of the place of use were cultivated. The photographs do not indicate any irrigation at the time the photos were taken. Satellite imagery from 1982-1987 indicates that the place of use was not irrigated during those times either. This confirms six consecutive years of non-use. In 1987, the authorized place of use was burned in a wild fire and the power poles were removed. It has been reported that this land was then put into the Conservation Reserve (CRP) program, but no records can be found to confirm this contract. Without confirmation of this contract, which may be sufficient cause for nonuse, the water right is subject to relinquishment for those years. Phil Isaak has provided Ecology with an application that requested a seasonal change for the 1991 season. Ecology has been unable to find any documentation that this application was received or approved. In any case, a seasonal change does not confirm beneficial use of a water right. In 2005, Phil Isaak signed a ten year CRP contract for the authorized place of use, starting in 2006. A CRP contract generally qualifies as sufficient cause in regards to relinquishment, for those years listed.

A request for information was sent by certified mail to the applicant on March 7, 2013 asking for any additional information that would confirm historic beneficial use of water. No additional information was submitted by the applicant.

Based on the information provided and the investigation into historic beneficial use, this right is subject to relinquishment for non use, in accordance with RCW 90.14.180:

- (RCW 90.14.180) *“Any person hereafter entitled to divert or withdraw waters of the state through an appropriation authorized under RCW 90.03.330, 90.44.080, or 90.44.090 who abandons the same, or who voluntarily fails, without sufficient cause, to beneficially use all or any part of said right to withdraw for any period of five successive years shall relinquish such right or portion thereof, and such right or portion thereof shall revert to the state, and the waters affected by said right shall become available for appropriation in accordance with RCW 90.03.250. All certificates hereafter issued by the department of ecology pursuant to RCW 90.03.330 shall expressly incorporate this section by reference. [1987 c 109 § 101; 1967 c 233 § 18.]”*

A formal relinquishment order will accompany the issuance of this Report of Examination because evidence of beneficial use of Ground Water Certificate No. 4844-A is lacking and appears to be relinquished. This process is defined in RCW 90.14.130:

- (RCW 90.14.130) *“When it appears to the department of ecology that a person entitled to the use of water has not beneficially used his water right or some portion thereof, and it appears that said right has or may have reverted to the state because of such nonuse, as provided by RCW 90.14.160, 90.14.170, or 90.14.180, the department of ecology shall notify such person by order: PROVIDED, That where a company, association, district, or the United States has filed a blanket claim under the provisions of *RCW 90.14.060 for the total benefits of those served by it, the notice shall be served on such company, association, district or the United States and not upon any of its individual water users who may not have used the water or some portion thereof which they were entitled to use. The order shall contain: (1) A description of the water right, including the approximate location of the point of diversion, the general description of the lands or places where such waters were used, the water source, the amount involved, the purpose of use, and the apparent authority upon which the right is based; (2) a statement that unless sufficient cause be shown on appeal the water right will be declared relinquished; and (3) a statement that such order may be appealed to the pollution control hearings board. Any person aggrieved by such an order may appeal it to the pollution control hearings board pursuant to RCW 43.21B.310. The order shall be served by registered or certified mail to the last known address of the person and be posted at the point of division or withdrawal. The order by itself shall not alter the recipient's right to use water, if any. [1987 c 109 § 13; 1967 c 233 § 13.]”*

Other Rights Appurtenant to the Place of Use

A review of Ecology records was conducted for existing water right certificates, permits, and claims in the area surrounding the project. This includes the authorized place of use and the proposed place of use. The search focused primarily on Section 21 within, T. 25 N., R. 30 E.W.M. and Section 4 within, T. 24 N., R. 29 E.W.M. This review shows no overlapping rights with the authorized and proposed place of use.

Hydrologic/Hydrogeologic Evaluation

Lacking evidence of beneficial use, no hydrogeologic analysis was conducted as a part of this decision.

Impairment Considerations

Lacking evidence of beneficial use, no impairment analysis was conducted as a part of this decision.

Public Interest Considerations

No protests were received against granting the proposed change, in response to the amended public notice published February 6 and 13, 2013. One protest was received, from Fordair Water Association, against granting the proposed change, in response to the first public notice published June 20 and 27, 2007.

Lacking evidence of beneficial use, no public interest analysis was conducted as a part of this decision.

Conclusions

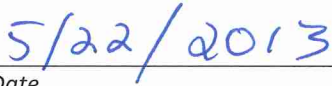
In accordance with Chapter 90.14, Ground Water Certificate No. 4844-A appears to be subject to relinquishment for non-use. Lacking evidence of beneficial use, the water right transfer is **denied**. An analysis of Hydrogeology (including same body of public ground water), Impairment, Public Interest, and Enlargement were not conducted since no evidence of beneficial use was found.

RECOMMENDATIONS

Based on the above investigation and conclusions, I recommend that this request for a water right change be **Denied**.

An Order of Relinquishment will accompany this decision.


Dan Tolleson, Report Writer


Date

If you need this publication in an alternate format, please call the Water Resources Program at (360) 407-6600. Persons with hearing loss can call 711 for Washington Relay Service. Persons with a speech disability can call 877-833-6341.